

testimony that has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

§ 9409.4 Production or disclosure prohibited unless approved by appropriate Commission official.

(a) No employee or former employee of the Commission shall, in response to a demand of a court or other authority, produce a record or disclose any information relating to any record of the Commission, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without the prior, written approval of the General Counsel of the Commission.

(b) Any expert or opinion testimony by a former employee of the Commission shall be excepted from the requirements of this part where the testimony involves only general expertise gained while employed at the Commission.

§ 9409.5 Procedures for demand for testimony or production of documents.

(a) A demand directed to the Commission for the testimony of a Commission employee or for the production of documents shall be served in accordance with the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, or applicable State procedures and shall be directed to the General Counsel, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. Acceptance of a demand shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the applicable laws or rules.

(b) If a subpoena is served on the Commission or a Commission employee before submitting a written request and receiving a final determination, the Commission will oppose the subpoena on grounds that the request was not submitted in accordance with this part.

(c) A written request must contain the following information:

(1) The caption of the legal proceeding, docket number, name and address of the court or other authority involved; and the procedural posture of the legal proceeding.

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on the Commission to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than a Commission employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case;

(9) An estimate of the amount of time that the requester and other parties will require of each Commission employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding; and

(10) Whether travel by the Commission employee is required to provide the testimony; or, in lieu of in-person testimony, whether a deposition may be taken at the employee's duty station.

(d) The Commission reserves the right to require additional information to complete a request where appropriate.